



OECA Echo

Enforcement and Compliance Assurance for a Cleaner Environment

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From the Assistant Administrator
Steven A. Herman

Innovative Enforcement Settlements Advance Environmental Justice

Since the creation of OECA, we have worked hard to ensure that environmental justice concerns are fully integrated into our actions and programs. This Administration is committed to the basic proposition of equal environmental protection for everyone, regardless of race or income. Everyone living in the United States is entitled to safe drinking water, clean air, and to live in neighborhoods that are not illegally used as habitual dumping grounds for hazardous wastes.

Both OECA's civil and criminal enforcement programs have made major contributions to helping the agency meet this commitment.

The Office of Criminal Enforcement, Forensics

and Training (OCEFT) has more than 190 criminal investigators in offices in 37 major cities. These offices have been active in investigating and prosecuting environmental crimes that impact low income and minority populations. In a recent case, individuals were convicted of violating the Federal Insecticide, Fungicide, and Rodenticide Act for the unlicensed commercial application of the pesticide methyl parathion. Homes and day care centers in a poor, African-American area in Mississippi were literally "poisoned" by application of this extremely toxic pesticide. As a result of a successful investigation involving the Criminal Investigation

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Congress Gets Superfund Principles, Brownfield Plan

The Administration's Superfund legislative reform principles were sent to Congress in May by Administrator Carol Browner. In a letter to key Senate and House environment and public works and commerce committee chairmen and members, the Administrator identified the following major principles:

- Make those responsible for contamination pay to clean it up.
- Limit liability for very small volume contributors, generators and transporters of municipal solid waste, and bona fide prospective purchasers.
- Establish orphan share funding from a separate account so that orphan share compensation does not compete against cleanup dollars or reduce the funding available for response actions; and promote a "flexible, nonprescriptive process" that makes effective use of available orphan share funding.

The Administration will strongly oppose site-liability carveouts (those that eliminate liability for persons based on type of site). Additionally, the Administration will oppose limits on EPA's authority to unilaterally order PRPs to implement site cleanup when there is imminent and substantial endangerment

present at a site and repeal of all or part of the current strict, retroactive, joint and several liability standards. The Administration also objects to preemption of state liability laws; establishment of pre-enforcement judicial review of remedy decisions; and changes to the liability system that slow cleanups, reduce program efficiency or increase litigation and transaction costs, or that reduce the possibility of settlements.

Also sent to Congress in May was a proposed multimillion dollar program to help clean polluted industrial sites that are not eligible for inclusion on the CERCLA National Priorities List. Congress was urged to approve an extra \$2 billion in tax credits for that purpose. Under the proposal, a two-year effort to redevelop some 5,000 brownfields, the government will invest about \$300 million and provide an additional \$165 million in loan guarantees.

The program also calls for the federal government to review and help develop its own idled brownfield sites. Additional funds would be provided to cities and localities for job-training, redevelopment, housing and other purposes. **Contact:** Paul Connor, (202) 564-5114; Katherine Dawes, (202) 260-8394. ■

Enforcement Cases Advance Environmental Justice Goals To Improve Lives of People

(Continued from Page One)

EPA personnel who want to know more about the OECA environmental justice program and get involved in it should contact Robert Banks at (202) 564-2572

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Division the FBI, and Mississippi state officials, one of these individuals received the longest sentence ever for an environmental crime while the other received a significant sentence.

In another criminal case, a Tennessee man was convicted of violating the Resource Conservation and Recovery Act by illegally storing and disposing of hazardous waste in a South Memphis neighborhood. Levels of heavy metals, acids, organic materials and solvents were as much as 2000 times the regulatory limit and so saturated the ground that it was considered "ignitable." The site is now in clean up under Superfund and the individual received a significant prison sentence.

OCEFT also provides training and grant assistance and provides investigative assistance for civil cases through the National Enforcement Investigations Center to cities to help combat illegal dumping. Both Houston and Chicago have received assistance.

We also are making innovative use of our civil enforcement authorities to promote environmental justice. The last issue of the ECHO described the landmark settlement with the Sherwin-Williams Company in Chicago. In addition to requiring the company to reduce the emission of hundreds of tons of ozone-forming VOCs into the air, the settlement contained a supplemental environmental project (SEP) which requires the company to contract with the city to perform a \$1 million cleanup and restoration project at a brownfield site in Southeast Chicago near the facility. This provision will promote economic development and opportunities in a community that sorely needs it.

Over the last year, the federal government has successfully negotiated other settlements that contain innovative solutions that promote environmental justice and encourage community-based participation and decision-making:

In April 1997, Region 6 secured an agreement that will provide minority and low income residents of an El Paso County Texas border community (colonia) with a permanent supply of fresh drinking water. "Colonias" are low income housing projects serving mostly Hispanic residents. They often lack basic water service and a sewage treatment system, increasing the chances that people will become ill from drinking contaminated water. The settlement, brought under the emergency powers provision of the Safe Drinking Water Act, requires the developers who sold the lots to supply the residents with an interim source of potable water until water service lines are constructed by the local water authority. The new water mains, which will give the colonia access to the public water utility, are essential because the lots were sold to the residents when no public water supply or sewers were available. The developers will pay for the temporary water supply until construction of the permanent water main—set to begin in later 1997—is complete. They will then pay for construction of the connections necessary to connect the homes with the water lines.

In December 1996, the Tenneco Oil company agreed to build a new water system for the Sac and Fox Nation in Oklahoma as part of a \$3.5 million settlement resolving allegations that the company polluted the groundwater of the Nation through years of faulty oil drilling and production practices. Tenneco will provide a permanent supply of potable water to the Nation by constructing water supply wells and delivery systems on more than 120 acres of land to be purchased by Tenneco and deeded to the Sac and Fox Nations. In addition, Tenneco will install a water recovery system, allowing the Nation to irrigate its lands and promote a farming economy. The company also will restore an area of tribal land damaged by years of oil and gas retrieval, and pay the Nation \$1.6 million in compensation for past contamination. Under the agreement, the Nation will spend about \$75,000 of this payment to restore additional areas of the reservation that were damaged by oil production, including the removal of abandoned oil field equipment and the cleanup of existing wells.

Lastly, in January 1997, we settled a comprehensive multi-media action with the Puerto Rico Electric Power Authority (PREPA) for multiple violations of air, water, UST and spill control regulations. PREPA will spend more than \$200 million to upgrade and improve the operations of its power station in order to reduce SO2 emissions by more than 30 percent. The company also will spend \$4.5 million dollars on environmental projects that are based directly on suggestions from groups representing communities living near the PREPA plants. First, the utility will spend \$3.4 million over four years to acquire and permanently preserve the natural habitat of Cienaga Las Cucharillas near two of the power plants. PREPA will work with the Conservation Trust of Puerto Rico to carry out this project, which was proposed by an environmental community organization centered in the Catano area. Second, PREPA will spend at least another \$1 million to hire an independent environmental review contractor to work with community organizations in the areas near PREPA plants to assist them in maintaining up-to-date information about PREPA's compliance with the settlement, and to provide training and independent technical expertise. This project addresses two separate proposals made by a community group in Guayanilla, Puerto Rico.

These settlements are just a few examples of how we can use our enforcement tools creatively and innovatively to improve the lives of people who don't share in the environmental protections most of us take for granted. We will continue to aggressively look for opportunities to promote the promise of, and commitment to, environmental justice in the work we do. ■

\$22 Million In Penalties Assessed, Valuable Chemical Data Gained, as TSCA Audit Program Ends

On April 23, OECA announced completion of its Toxic Substances Control Act (TSCA) Compliance Audit Program (CAP) section 8(e) enforcement initiative, which gave industries an opportunity to provide information to government agencies about possible violations in return for reduced penalties.

"This is an example of a compliance incentive program that worked," said Michael Stahl, OECA deputy administrator. "Because of its success, we may do more of this type of audit initiative in the future."

Under the initiative, EPA received over 11,000 previously unsubmitted studies or reports from 89 companies on chemicals that may present a substantial risk of injury to health or the environment. The agency assessed a total of \$22,764,000 in civil penalties against the companies, which had originally failed to adequately report certain information about the potentially hazardous nature of their products. By participating in the CAP initiative, the companies avoided even larger penalties.

TSCA section 8(e) requires companies that

manufacture, process or distribute chemicals to inform EPA of any information that reasonably supports the conclusion that a mixture or substance presents a "substantial risk of injury to health or the environment." The initiative was undertaken because EPA discovered that some regulated industries were not submitting important chemical data on a timely basis. In all, 123 companies, including those engaged in chemical production and importation, petroleum refining, aerospace and electronic manufacturing, signed up under the CAP to conduct internal chemical data audits. Of these, 34 reported they had no outstanding 8(e) information due the agency. Of the remaining 89 companies, the 11,000 studies submitted during the CAP account for about 80 percent of all submissions received throughout the 8(e) program's history. The agency is currently reviewing this information to determine whether particular chemicals or mixtures warrant further assessment and regulation. **Contact:** Carl Eichenwald, (202) 564-4039 ■

OECA Moves Against Misleading Consumer Product Claims

EPA recently acted in two major cases to halt misleading advertising and unproven health claims by manufacturers. In both instances, the companies claimed the products prevented, destroyed or repelled pests. But, they had not registered their products with EPA and the products had not gone through the agency's regulatory process to determine if they were safe and effective. Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA registers all pesticides and pesticide products for use in and around homes.

In April, the agency reached an enforcement agreement that prevents Hasbro, Inc., manufacturers of Playskool toys, from claiming that toys treated with an antibacterial pesticide protect children from infectious diseases caused by bacteria. Labels and advertisements for the toys suggested that the treatment protects children from health risks, when, in fact, it protects only the plastic in the toy from deterioration. Hasbro agreed to revoke earlier claims and to correct the information through advertisements and to pay a penalty of \$120,000. The collective value

of the actions that Hasbro will take are estimated to be well in excess of a million dollars.

In another case, the Environmental Appeals Board on August 21 issued a final consent order approving EPA's consent agreement with Joyce Chen, Inc., of Billerica, MA. The company was ordered on June 27 to stop selling 12 unregistered cutting board products that make pesticidal claims. The boards carry a label claiming they prevent the growth of commonly occurring household food poisoning organisms, including salmonella and E. coli, and reduce the danger of bacterial contamination. The boards were treated with Bacteron, a pesticide that protects products from odor-causing bacteria, but has not been proved effective against organisms that can cause disease in humans. Because the labels claim the products prevent, destroy or repel pests, they are considered pesticides and must be registered with EPA. Under the consent agreement, the company must pay an \$82,500 fine and relabel and repackage the boards. **Contact:** Marc Borodin, (202) 564-4041 ■

Underground Storage Tank Initiative Results Reported

Results of a nationwide state-EPA enforcement initiative to identify and correct violations of state and EPA regulations requiring the use of approved leak detection methods at underground storage tank (UST) facilities were announced in July. During May inspections, 51 states and territories and EPA identified over 3,000 violations at approximately 10,000 facilities inspected. In most cases, owners were not immediately penalized but were expected to take action within 30 days to install or perform release detection and keep records in accordance with state and federal requirements.

In more than 400 cases, however, states and EPA proposed or collected fines ranging from \$50 to more than \$300,000. The largest fines were assessed where owners had a history of noncompliance or where violations posed a significant threat to health and the

environment. The national total of fines proposed or collected was slightly over \$1 million.

Owners and operators of USTs installed before December 1988 were also reminded that spill, overfill, and corrosion protection requirements designed to prevent future leaks will take effect in December 1998, except in a few states where they are already in effect. (USTs installed after December 1988 had to meet more stringent requirements when they were installed.) Owners and operators of older USTs will need to replace or upgrade their tanks to meet these requirements, or close them properly. EPA recently announced that the agency will not grant any extensions of the December 1998 deadline. The 1998 requirements are a key element in the ongoing state-EPA effort to prevent groundwater contamination. **Contact:** Debbie Rutherford, (703) 603-9163 ■

Cases Closed:

Two Major Settlements Protect Aquatic Environment In California, Alaska

EPA's Enforcement and Compliance Assurance Accomplishments Report for fiscal year 1996 is available in hard copy and via the agency's Internet Home Page. Contact EPA's National Center for Environmental Publications and Information at (800) 490-9198 for a hard copy. The report number is EPA-300-R-97-003. It can also be downloaded from the EPA Website at WWW.EPA.Gov/OECA.

\$14 Million Settlement Reached With California Utility For Clean Water Act Violations

One of the largest environmental consent decrees in California history was lodged against Pacific Gas & Electric Co. (PG&E) in U.S. District Court for the Northern District of California on May 27. The alleged violations arose out of PG&E's incomplete and inaccurate reporting of required data about the environmental impact of the cooling water intake system of its Diablo Canyon nuclear power plant in the late 1980's. Under the settlement, PG&E will spend more than \$14 million, including \$7.1 million in civil penalties to the state and EPA and over \$6 million for environmental enhancement and restoration projects.

PG&E's Diablo Canyon facility is located on the central California coast near San Luis Obispo. The plant, in operation since 1985, pulls in sea water to cool condensers and discharges the heated water into the Pacific Ocean. Its NPDES permit requires the plant to submit a report indicating the impact of the cooling water intake system on the surrounding marine environment, including losses of fish, fish larvae and other biomatter which are trapped by intake screens. The State of California considered the data in the report when developing permit requirements to try to reduce environmental damage caused by the system.

PG&E submitted a report in April 1988 indicating that the cooling system had minimal adverse environmental impact. However, it was later learned the report omitted critical data which may have altered those conclusions. The omitted data consisted of other studies which indicated significant losses of aquatic life (e.g., 70 - 90 percent). Although PG&E's employees and contractors brought the omitted data to PG&E's attention in January 1992, the company failed to disclose the data to the regulating agencies until 1994.

The California Attorney General's office began investigating these omissions of data and failure to promptly notify the regulatory agencies in January 1995, then asked EPA Region 9 to become involved. In March 1996, EPA Region 9 referred the civil enforcement action to the Department of Justice with a recommendation for a coordinated action with the state.

In addition to the \$7.1 million penalty, there are two environmental restoration projects contained in the consent decree that will be paid for by PG&E. First, more than \$3.6 million will be used for the State of California to implement a conservation and management plan for the Morro Bay National Estuary, located near the plant. In the other, about \$2.4 million will be used for San Jose State University to implement

the state's mussel watch program. By sampling water, sediment and marine life, this program will detect the presence and evaluate the impact of toxic substances and pollutants in California's bays, harbors and estuaries, serving as an "early warning system" to enable the State to take the preventive steps needed to reduce the risk of more serious environmental harm.

In April 1996, the League for Coastal Protection filed a citizen suit under the Clean Water Act in federal court alleging essentially the same violations as in the federal-state suit. That action is also being resolved in coordination with the governments' case. **Contact:** Laurie Kermish, (415) 744-1344. ■

In Alaska

Owner of World's Largest Lead and Zinc Mine Agrees To \$4.7 Million Environmental Settlement

Cominco Alaska Inc. agreed in July to spend more than \$3 million on three environmental protection projects and pay a \$1.7 million civil penalty to settle allegations that it committed hundreds of Clean Water Act violations at its Red Dog Mine complex. Located above the Arctic Circle, Red Dog is the world's largest lead and zinc mine.

Under the agreement, Cominco will:

- Monitor groundwater and permafrost to determine whether contaminated wastewater from the Red Dog tailings pond is seeping or could seep into ground water and from there to surface waters. The company estimates the groundwater monitoring program will cost more than \$2.7 million to develop and install, plus \$210,000 for maintenance and operation.
- Build a barrier to keep native fish populations away from Red Dog mine discharges at an estimated cost of \$238,000, plus \$7,000 in annual maintenance expenses.
- Conduct a study to determine whether the mine discharges are affecting the health of aquatic life in and around the Red Dog Creek system, at an estimated cost of \$98,000.

The government's lawsuit, filed at the same time as the proposed settlement, alleged several hundred violations of the allowable limits for metals and pH contained in the mine's federal wastewater permit. It also alleged unpermitted discharges of sanitary waste from a temporary housing facility at the mine site, and more than a thousand violations from 1990 to 1993 at Cominco's sanitary sewage treatment facility. **Contact:** Robert H. Jacobson, (206) 553-1203 ■

Sector Notebooks Finding Large Audience

The Office of Compliance's Sector Notebook Project is proving its worth to a wide audience wanting regulatory information organized by industry sector. In the first year since they were published, more than 45,000 notebooks have been distributed in both hard copy and in electronic format via the world wide web. Organized around a specific industry, each notebook contains: a national summary of the industry, process descriptions, waste releases, pollution prevention opportunities, applicable statutes and regulations, compliance and enforcement profiles, and a contact directory.

By drawing together these topics, the notebooks direct decision makers toward comprehensive multimedia solutions to environmental problems. These summary compilations have been especially useful for federal and state regulatory officials, small business service providers, community groups, educators, international organizations, and foreign governments. The notebooks are virtually the only government publication in which all of these cross-cutting environmental issues are presented in a single document.

Building on the success of the first 18 industry sector notebooks, the Office of Compliance is expanding the project by profiling 10 more industries. By September,

notebooks will be published focussing on these additional industries: metal castings, pharmaceuticals, plastic resin and manmade fiber, fossil fuel electric power generation, textiles, air transportation, ground transportation, water transportation, and ship building/repair.

Besides the new sector notebooks, a Sector Notebook Data Refresh document is being compiled to update the data presented in the original 18 notebooks which were published in 1995.

The notebooks can be accessed at: <http://es.inel.gov/oeca>. Click on Sector Notebooks. Or at www.epa.gov/oeca. Hard copies of the Notebooks can be ordered from the Government Printing Office (202) 512-1800. Complimentary copies are available for government personnel and non-profit organizations from EPA's National Clearing House for Environmental Publications and Information (800) 490-9198. **Contact:** Seth Heminway at (202) 564-7017 or "heminway.seth@epamail.epa.gov". ■

TRI Rule Expanded

The number of industrial facilities required to report under Toxic Release Inventory (TRI) was expanded in April. The expanded rule increases by about 30 percent the number of industrial facilities required to make public the levels of toxic chemicals they release into the air, water and land in communities across America under the community right-to-know provisions of EPCRA. The new rule calls for approximately 6,100 new facilities, in seven industrial sectors, to begin reporting on toxic releases in local communities. A total of over 31,000 facilities will now report toxic emissions to the public, providing new information on local pollution.

The new categories under the right-to-know program are metal mining, coal mining, electric utilities, commercial hazardous waste treatment, petroleum bulk terminals, chemical wholesalers, and solvent recovery services. **Contact:** Robin Lancaster, (202) 564-4172 ■

Drycleaning Mentor Training Project

Thirty five members of the Korean Drycleaners Association of Greater Washington, DC received certificates of appreciation from EPA in April. The certificates recognized the participation and leadership of these individuals in a pilot mentoring program developed by OECA to educate drycleaners about environmental requirements affecting the drycleaning industry and to help them comply with those requirements.

The drycleaners received training in the relevant technical and reporting requirements for the drycleaning industry, using a Korean-language version of EPA's drycleaning compliance guidance as a workbook. A mock inspection was also conducted. If the result of the pilot indicates that mentoring programs are efficient and economical ways to empower the regulated community and increase compliance, this type of program could be used for other small business sectors, particularly those with significant non-English speaking communities. **Contact:** Ginger Gotliffe, (202) 564-7072 ■

FINAL PUBLIC MEETING in National Performance Measures Strategy series will be held at the Holiday Inn-Historic District hotel in Alexandria, VA on October 7.

Indian Land Pollution Study On Internet for Comment

EPA has nearly completed compilation of valuable data allowing measurement of releases of toxic chemicals to the air, land, and water on Tribal lands and has put draft findings on the Internet for comment. The American Indian Lands Environmental Support Project (AILESP) establishes a data base containing information on chemical point source releases (TRI, PCS, AIRS, NPL sites); enforcement and compliance histories of facilities regulated under CAA, CWA, and RCRA; and data on fish consumption advisories, contaminated fish tissues and contaminated sediments on and near Indian lands.

Information developed through use of EPA data bases indicates that more than 2,000 industrial, municipal, and federal facilities are located on and within four kilometers of tribal lands and report releases of toxic chemicals. The data also indicates that 61 percent of all air-permitted facilities on tribal lands have never been inspected. The data is being reviewed by EPA regions and Indian tribes to assess the accuracy of the data and to determine whether the project should be updated and distributed on an annual basis.

A draft of the project's database and of the accompanying user's guide is available for review and comment on the Internet at <http://es.inel.gov/oeca/ailesp>. **Contact:** Catherine Fox, (202) 564-4299. ■

OECA HOME PAGE is available on the Internet accessible through the EPA Home Page at <http://www.epa.gov/oeca> and the Enviro\$en\$e Home Page [es.inel.gov].

Signs Indicate Improved Industry Compliance Through Agency Self Disclosure Policy

EPA's self disclosure policy provides incentives for industry to voluntarily identify, disclose and correct environmental violations. The agency believes that giving incentives, such as greatly reduced or waived penalties, to businesses, will encourage environmental auditing and lead to greater compliance. Audit policies, as opposed to audit laws, provide incentives to businesses to conduct audits while preserving the enforcement flexibility the government needs to ensure compliance. OECA's Office of Planning and Policy Analysis (OPPA) leads the agency's effort to encourage states to adopt penalty mitigation policies like the self-disclosure policy in lieu of audit privilege and immunity laws.

The self-disclosure policy has been in effect since January 1996. Under the policy to date, 120 companies have disclosed and corrected environmental violations at more than 400 facilities. EPA has settled with 42 companies at 45 facilities and has agreed to waive all penalties for 33 of these companies.

In promoting self-disclosure by companies to achieve compliance with environmental laws and regulations, OPPA has spearheaded a number of outreach efforts. It actively participates in educational conferences aimed at explaining the policy to industry representatives, sends letters to companies stating the agency's intention to conduct spot inspections in the near future, and broadcasts successful regional programs to increase compliance and awareness.

Another aspect of the EPA effort on this issue is to work with officials from states with audit laws to determine whether their state's audit privilege and immunity law impairs the state's ability to administer federally approved environmental programs. For example, a state's privilege law might impair state and public access to information relevant to determining enforcement and compliance. Similarly, a state's penalty immunity provisions might impair the state's ability to recover penalties for violations as required in state law. EPA recently successfully negotiated amendments to state laws with officials from Texas, Utah, and Michigan.

In recognition of EPA's strong commitment to federal/state partnerships, the agency issued a Statement of Principles on the audit issue on February 14, 1997. The statement sets forth the minimum requirements for states to obtain or maintain federally approved audit programs. Federal laws and regulations establish clear standards that states must meet to obtain approval to administer federal environmental programs. To meet the minimum federal requirements for adequate enforcement authority for program approval, states with audit laws must retain the ability to obtain penalties and injunctive relief for violations, as well as the ability to obtain information needed to identify violations or determine compliance status. **Contact:** Amanda Gibson, (202) 564-4239 ■

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